

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-8018

WILLIAM A. GROSS,

Petitioner - Appellant,

versus

K. J. BASSETT, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, District Judge. (CA-04-125-1-CMH)

Submitted: May 12, 2005

Decided: May 17, 2005

Before TRAXLER, KING, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

William A. Gross, Appellant Pro Se. Kathleen Beatty Martin, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

William A. Gross seeks to appeal the district court's order denying his motion filed under 28 U.S.C. § 2254 (2000) in which he claimed there was insufficient evidence to support his conviction. An appeal may not be taken from the final order in a § 2254 proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Gross has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal.

In addition, Gross raises an ineffective assistance of counsel claim for the first time in his appeal to this court. Because this claim was not raised in the district court, Gross may not raise it now on appeal. See Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993). Accordingly, we deny a certificate of appealability

and dismiss as to this claim as well. We deny Gross' motion for appointment of counsel. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED